

NO. 25665

IN THE SUPREME COURT OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee,

vs.

KARMAL BANASIHAN, Defendant-Appellant.

APPEAL FROM THE FIFTH CIRCUIT COURT
(FC-CR NO. 02-1-0151)

ORDER REVERSING JUDGMENT OF CONVICTION

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy JJ.)

Upon review of the parties' briefs and the record, it appears that Plaintiff-Appellee State of Hawaii's (Appellee State) confession of the family court's error is supported by the record and well-founded in law. State v. Hoang, 93 Hawai'i 333, 336, 3 P.3d 499, 502 (2000). Furthermore, the error is properly preserved and prejudicial. Id. After the family court charged Defendant-Appellant Karmal Banasihan (Appellant Banasihan) with abuse of a family or household member in violation of HRS § 709-906 (Supp. 2001), the family court erred when it found Appellant Banasihan guilty of harassment in violation of HRS § 711-1106 (Supp. 2001), because, under HRS § 701-109(4) (1993), harassment does not qualify as a lesser included offense of abuse of a family or household member. Under the due process clauses of the fourteenth amendment to the United States Constitution and article I, section 5 of the Hawai'i Constitution, "procedural due process of law requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner before governmental deprivation of a significant liberty interest." State v. Bani,

97 Hawai'i 285, 293, 36 P.3d 1255, 1263 (2001) (citations omitted). "The purpose of notice is to ensure that interested parties are apprised of the pendency of any proceeding which is to be accorded finality. Given notice, parties are able to determine how to respond and prepare for the issues involved in the hearing." State v. Navor, 82 Hawai'i 158, 161, 920 P.2d 372, 375 (1996) (citation and internal quotation marks omitted). By not giving Appellant Banasihan prior notice of a possible conviction for harassment in violation of HRS § 711-1106, the family court violated Appellant Banasihan's constitutional right to due process. Therefore,

IT IS HEREBY ORDERED that Appellant Banasihan's conviction for harassment in violation of HRS § 711-1106 is reversed.

DATED: Honolulu, Hawai'i, October 30, 2003.